IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9091 OF 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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HARSUKH VALLABHDAS RAJA - Petitioner(s)
Versus
COLLECTOR OF JUNAGADH & ORS - Respondent(s)

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Appearance :
MR. MEHUL S. SHAH for Petitioner(s).
MR. A.Y. KOGJE AGP for Respondent(s) : 1 & 2.
None for Respondent No. 3 though name of Mr. N.P. Nanavati appears in the Daily Board.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/11/2006

ORAL JUDGMENT

The petitioner, a resident of Junagadh, has come to this Court submitting, *inter alia*, that recovery of fee for entry into the protected monument is per se

illegal and the fee cannot be collected under the Resolution passed by the Upperkot Development Committee.

2. According to the petitioner, the Upperkot area encircles Buddhist caves and other protected monuments of national importance and even otherwise persons from all over the world, who come to visit Junagadh, make sure that they visit the said Upperkot area. According to the petitioner, all structures, erections, monuments, caves, rocks, sculptures, inscriptions are of historical archaeological interest and are in existence for more than 100 years. According to him, all these protected monuments are within the Upperkot area of Junagadh, which is bounded by fort with a gate. In front of the gate, a board has been placed declaring the property to be a protected monument as archaeological site and remains of national importance. The submission is that respondent No.1, headed by respondent No.2 as Chairman, resolved to charge entry fee for entry into the aforesaid protected area at the rate of Re.1/- per individual, fee of Rs.2/- for a two wheeler and Rs.10/- for a motor vehicle from the visitors. It is also the case of the petitioner that on a complaint made to the Government, Archaeological Survey of India, Vadodara Circle, Vadodara, the Superintending Archaeologist of the Department

recommended, by an intimation dated 15th February, 1993, to cancel the charging of the aforesaid fees from the visitors. It is also the case of the petitioner that respondent No.2 has been informed by the Director of Ancient Monuments, Department of Gujarat State, by a letter dated 30th March, 1993 accordingly.

3. The grievance of the petitioner is that despite the aforesaid intimation to the respondents under the above referred letters, mandating them not to recover the fee, the respondents are still recovering the fee from the public visiting the ancient monuments. The further submission of the petitioner is that in accordance with the provisions contained in Section-39 of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965 (Gujarat Act No.25 of 1965) (hereinafter referred to as `the Act' for short), the State Government has powers to make the rules. The submission is that in accordance with Clause-(b) of Sub.section-(2) of Section 39, the Government has right to make the rules pertaining to the right of access of the people to the protected monument and the fee, if any, to be charged therefor.

4. Shri M.S. Shah, learned Counsel for the petitioner, submits that Sub.section-(2) of Section-39 is

subject to Sub.section (4) of Section-39 of the Act, which provides that all rules made under Section-39 shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following. His submission is that the State Government has made the rules in the year 1967, known as “The Gujarat Ancient Monuments and Archaeological Sites and Remaining Rules, 1967”, but, the said Rules do not provide for the fee, etc., therefore, the Upperkot Development Committee could not impose or charge any fee on or from the visitors coming to visit the national monuments or remains.

5. The respondents, in the affidavit, have stated that imposition of charge is in accordance with law and that only seven monuments so far have been declared protected and from amongst them, only one monument called ``Buddhist Caves” had been declared protected under the National Monument Act, 1958, administered by ASI, and six have been protected by the State Department of Archaeology under 1965 Act whereas rest of the monuments and antiquities are lying uncared, uncontrolled and

unprotected. At this stage, I must observe that if it is the duty of the State to protect its national heritage, national monuments, the remains and sites, then, the State cannot make a long face and say that number of other monuments and antiquities are lying uncared, uncontrolled and unprotected. It is a slur on the State Government that one of their Officers files an affidavit before the High Court and says that the property of the national importance is lying uncared. I fail to understand, what the State wants to say by raising such pleadings. Be that as it may. The State has further submitted that fees is being charged for entry into many monuments, museums and zoos, etc., which sometimes is tremendously high. Quoting example of Taj Mahal, it is submitted that the entry fee has been raised to Rs.100/- per head.

In paragraph-9 of the counter affidavit, the State Government does not say that in accordance with the rules, the fee has been levied and enhanced or some committee or few persons exercising some special powers have imposed the said fee.

6. The question before this Court is that in absence of the rules framed under Section-39(2)(b) of the

Act governing the right of access of the people to a protected monument and the fee to be charged therefor, whether some committee, which is taking care of the property, can fix the fees. It is not in dispute before me that barring 1967 Rules, the State Government has not framed any other rules. A fair reading and understanding of 1967 Rules would make it clear that the State Government did not frame the rules to cover the contingencies of Clause-(b) of Section-39(2) of the Act. If the State Government has not framed the rules, then, neither it can delegate its authority to anybody nor any other authority under the Act, in the name of maintenance, can charge anything.

7. The learned Counsel for the State Government has, however, submitted that the State Government has delegated its powers to the State Advisory Board and under such circumstances, imposition and recovery of the fee must be held to be valid. The argument raised by the learned Counsel for the State runs contrary to Sub.section-(4) of Section 39 of the Act, which provides that all rules made under Section-39 shall be laid for not less than thirty days before the State Legislature for its approval or rescission. Present is not a case where authority to make the rules has been conferred upon

somebody, who is subordinate to the State Government. The rules are to be framed by the State Government, but, those have to be approved by the Legislative Assembly. So long as the rules are not approved by the State Legislative Assembly, no person can say that the rules have come into force because approval by the State Legislative Assembly is a condition precedent for enforcement of the Rules.

8. Barring giving examples that at many other places, entry fee is charged, the State Government has not said that under any other provision of law, the Upperkot Development Committee or even the State Government is entitled to impose and recover the fee.

9. From the facts, even otherwise, it would appear that the Central Government, through its Local Officers at Vadodara, has required the Upperkot Development Committee not to recover money and even the State Government's directions, which runs in accord with the Central Government's directions, could not persuade the Upperkot Development Committee nor could it restrain the Committee from charging the fee. In a case where the State Government issues a direction to its subordinates or a Committee constituted by it, then, the person to

whom the powers are delegated and the Committee so constituted would be bound by such orders and mandates issued by the State Government. If such subordinate or delegatee or committee is given a free hand, then, that would lead to anarchism. Any person subordinate to the State Government cannot gainsay the authority of the State.

10. In view of the aforesaid discussion, especially, non-framing of the Rules under Section 39(2)(b), read with Section 39(4), of the Act, and the directions issued by the Central Government, through the Archaeological Department of the State Government, to the Upperkot Development Committee, I must hold that imposition and recovery of the entry fee is *per se* illegal and is contrary to the provisions of law. The Upperkot Development Committee is hereby directed not to charge or recover any fee from the visitors, who propose to make entry to visit the national monuments, etc. They are hereby forewarned that if they do not observe this order, then, the Members of the Committee would be exposing themselves to a serious risk.

The petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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